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July 25, 2013

CONFIDENTIAL LEGAL NOTICE
PUBLICATION OR DISSEMINATION IS PROHIBITED

VIA ELECTRONIC MAIL

John Cook
Editor-in-Chief
Gawker.com
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Leah Beckmann
Gawker.com
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Re: Marcus Wiley

Dear Mr. Cook and Ms. Beckmann:

We are litigation counsel for Marcus Wiley ("Mr. Wiley"), a Senior Vice President at Fox and one of the subjects of your proposed story ("the Proposed Story") on Gawker.com. This letter concerns Gawker's plans to publish the Proposed Story.

An individual's First Amendment right to write an article about private figures which is truthful, non-defamatory, does not invade the person's right of privacy or wrongfully appropriates or exploits the person's right of publicity, or promotes the article in an unfair and misleading way is unquestioned. However, Mr. Wiley strongly objects to and will exercise his legal rights and remedies regarding the publication of the Proposed Story to the extent that it is defamatory, invades his right of privacy, commercially appropriates his right of publicity, uses fiction-masquerading-as-fact, misrepresents him, or otherwise violates his rights in the ways described in this letter. Indeed, for a number of reasons, some of which are discussed in this letter, my client objects to the writing and publication of the Proposed Story.

We understand that your Proposed Story will falsely accuse Mr. Wiley of getting into physical altercations with two colleagues. Such an accusation is provably false. Indeed, had you checked with the two individuals, both would vehemently deny that they were ever involved

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in a physical altercation with Mr. Wiley. Doubtlessly, you have failed to check with either Shana Waterman or David Slevin, both of whom have personal knowledge of their involvement with Mr. Wiley so that you can be left to merely republish and regurgitate fabricated and fictionalized episodes and incidents about them. Such conduct would expose Gawker to liability and damages.

Mr. Wiley is a private person and private figure for First Amendment purposes. Even if you tried to research published stories and information to determine whether they are factual or are false and defamatory, or otherwise injurious to my client, neither you nor Gawker would be able to obtain first-hand, reliable information about him. Therefore, you would be acting at your peril, and with conscious disregard of the truth or falsity about things you may intend to write about him. If Gawker publishes the Proposed Story, it would similarly be acting with malice. By deciding arbitrarily whether to include certain information, anecdotes, events, conversations, etc. about Mr. Wiley, it would be as if you were playing Russian Roulette with the truth, and would increase your exposure to liability and damages, which would inevitably result from the writing and publication of the Proposed Story, since it would, no doubt, contain many things about my client which are false and defamatory, or fiction- masquerading-as-fact (whether defamatory or not), or which depict him in a false light in violation of his right of privacy.

If someone is willing to talk to you and/or give an interview about Mr. Wiley for use in connection with the Proposed Story, you can be certain that any person who falls into that category are people that do not have reliable, first-hand, truthful information about him and who may have their own self-serving reasons for providing third-hand, unsubstantiated gossip, or fabrications, or tabloid-initiated rumors or fictions (for example, being motivated by greed, avarice, or the desire for a moment of perceived fame, notoriety, or public attention).

This will constitute notice to you that if you do proceed to cause the publication of a story about my client, which is, in whole or in part, false and defamatory of him, or which depicts him in a false light in violation of his right of privacy, or which constitutes publication of private facts in violation of his right of privacy, or constitutes a false endorsement or false designation of origin, leading the public to believe that Mr. Wiley has endorsed, or sponsored, or are otherwise participating or cooperating in the writing of this story, you and all others acting in concert with you could then be held accountable and liable for any damages which any of them suffer, either in the form of loss of income, or other special damages, damage to reputation, or by the infliction of emotional distress.

Your description of your proposed story to an executive in Fox's publicity department paints my client in a negative fashion ascribing to him physically violent tendencies.

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It is well established that defamation may be accomplished through inference, innuendo or insinuation. Somalia, Law of Defamation (2d Ed.) Vol. 1, §4:17 (2013).

Sharon v. Time, Inc., 575 Fed. Supp. 1162 (S.D.N.Y. 1984), is instructive. In *Sharon*, General Ariel Sharon, former Minister of Defense of Israel, charged that *Time* magazine libeled him as part of a report on the Israeli government which concerned events surrounding a massacre of Palestinian refugees. The court ruled that, read in context, the *Time* article could reasonably be interpreted as libelous, because the challenged statement might reasonably be read to suggest that Sharon had encouraged soldiers to engage in bloodshed. The article's claim that the findings it reported were contained in a "secret appendix" to the commission report enhanced the reasonableness of the defamatory interpretation.

Here, your description of a false incident that Mr. Wiley choked a colleague enhances the defamatory interpretation that Mr. Wiley is a violent person. Such an implication and interpretation further underscores the reputational harm your publication is likely to cause him.

In *Chapadeau v. Utica Observer-Dispatch, Inc.*, 38 N.Y. 2d 196 (1975), the New York Court of Appeals held that "where the content of the article is arguably within the sphere of legitimate public concern, which is reasonably related to matters warranting public exposition," a private figure defamation plaintiff may recover if he or she can "establish by a preponderance of evidence that the publisher acted in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties." *Chapadeau*, 38 N.Y. 2d at 199. *Chapadeau* established that one need look only at whether the publisher's actions can be characterized as "gross irresponsibility" after comparing the publisher's conduct to the "standards of information gathering and dissemination ordinarily fall upon responsible parties." This standard comes into play when the alleged defamatory speech is arguably within the sphere of legitimate public concern. For the sake of argument, we will assume only that a story about Mr. Wiley arguably falls within the sphere of legitimate public concern even though Mr. Wiley is and has always been a private person.

You are on notice that if you publish this article without permitting my client to provide accurate and verifiable facts, facts which are unimpeachable, Gawker will act to its peril. Further, you are on notice that Mr. Wiley questions any attempt to paint him in a negative fashion in the article. Should Gawker publish a false and defamatory story about Mr. Wiley, it will proceed at its own peril. You should therefore govern yourself accordingly.

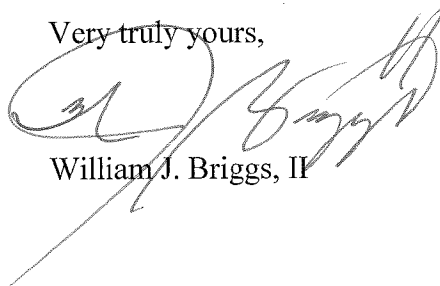
This letter does not constitute a complete or exhaustive statement of all of my client's rights, claims, contentions, or legal theories. Nothing stated herein is intended nor should

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it be deemed to constitute a waiver or relinquishment of any of my client's rights or remedies, whether legal or equitable, all of which are hereby expressly reserved.

This is a confidential legal notice and is not for publication. Any publication, dissemination or broadcast of any portion of this letter will constitute a breach of confidence and a violation of the Copyright Act. You are not authorized to publish this letter in whole or in part absent our express written authorization.

Very truly yours,

A handwritten signature in dark ink, appearing to read "W. J. Briggs, II", is written over the typed name. The signature is fluid and cursive, with a large initial "W" and a long, sweeping underline.

William J. Briggs, II

cc: Marcus Wiley